

11 U.S.C. §  
523(a) (5)  
11 U.S.C.  
§ 523(a) (15)  
Support

Indermuhle v. Indermuhle, Adv. No. 97-3104  
In re Indermuhle, Case No. 396-37290-dds7

7/1/97

DDS

Unpublished

Former spouse of Debtor filed adversary proceeding seeking a determination that certain obligations contained in a Stipulated Judgment of Dissolution of Marriage were nondischargeable.

The judgment lien on the marital residence in the amount of \$15,000 was not support or maintenance where the stipulated judgment clearly recited that the judgment lien was awarded "in consideration for the equity of [former spouse]." Although In re Shaver, 736 F.2d 1314, 1316 (9<sup>th</sup> Cir. 1984) required the court to look beyond the language of the stipulated judgment to the intent of the parties and to the substance of the obligation. The court found that, in light of the clear language of the stipulated judgment, the former spouse's express waiver of support, and the former spouse's state purpose to have a future stake in real property, the judgment was not in the nature of support. Thus, 11 U.S. § 523(a) (5) did not preclude a discharge of the judgment.

Additionally, the court found that Debtor did not have the ability to pay the judgment from his income or property which was not reasonably necessary for his own or his dependents' support. Thus, the judgment was dischargeable under 11 U.S.C. § 523(a) (15).

Finally, the agreement to hold the former spouse harmless from certain debts was to preserve the value to the former spouse of the judgment lien by protecting her credit to ensure that when she received payment on the judgment, she could qualify for a mortgage and, therefore, was not support. Because the former spouse appeared to be hopelessly insolvent and unable to pay her own obligations, the benefit to the Debtor in preserving his fresh start outweighed the detriment to the former spouse. The indemnity agreement was dischargeable.

JUL - 1 1997

LODGED \_\_\_\_\_ REC'D \_\_\_\_\_  
PAID \_\_\_\_\_ DOCKETED *W*

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
ROBERT K. INDERMUHLE, ) 396-37290-dds7  
Debtor. )  
\_\_\_\_\_) )  
LINDA J. INDERMUHLE, )  
Plaintiff, ) Adv. Proc. No. 397-3014-dds  
v. )  
ROBERT K. INDERMUHLE, ) FINDINGS OF FACT AND CONCLUSIONS  
Defendant. ) OF LAW  
\_\_\_\_\_)

After a sixteen year marriage plaintiff and defendant/debtor divorced. A Stipulated Judgment of Dissolution of Marriage ("Stipulated Judgment") was entered on March 18, 1996 in the Clackamas County Circuit Court. The parties have one child from the marriage. The Stipulated Judgment provides for joint custody and does not award child or spousal support. On September 24, 1996, debtor filed his voluntary chapter 13 petition but converted the case to chapter 7 on October 10, 1996. Plaintiff filed this

8

1 adversary proceeding seeking a determination that certain  
2 obligations contained in the Stipulated Judgment are  
3 nondischargeable pursuant to 11 U.S.C. § 523(a)(5) and (15). I find  
4 that debtor is entitled to discharge the obligations. My reasons  
5 follow.

6 1. The Judgment is Discharged.

7 The parties owned real property in Canby, Oregon. Pursuant  
8 to paragraph 18 of the Stipulated Judgment, the debtor was awarded  
9 legal title to the property subject to a judgment lien in favor of  
10 plaintiff in the amount of \$15,000<sup>1</sup>.

11 The property, located in close proximity to the Pudding  
12 River, flooded in February 1996 and again in November 1996. As a  
13 result of the floods, and because the parties have not had  
14 sufficient financial resources to repair damage to the property  
15 which resulted from the flooding, the basement is no longer  
16 habitable. The property has diminished significantly in value and  
17 the marketability of the home has been severely compromised.

18 Plaintiff argued that debtor never intended to pay her  
19 judgment. The testimony reflects that plaintiff was in possession  
20 of the real property during the time the parties were separated and  
21 until the Stipulated Judgment was entered. Debtor testified that  
22 when he took possession of the property in April 1996 the mortgage  
23 payments were three months in arrears. Although he borrowed money  
24

---

25 <sup>1</sup>The Clackamas County Circuit Court allowed a credit against the \$15,000  
26 obligation based upon plaintiff's use of FEMA funds intended to improve the  
property. The amount sought by the complaint is \$12,602.55. This amount  
is not contested.

1 to bring the payments current, he was unable to sustain the monthly  
2 payments due in part to substantial garnishments which Support  
3 Enforcement Division commenced on behalf of debtor's child from a  
4 separate relationship. Additionally, the parties had ceased making  
5 payments on the real property tax obligations as early as 1994. The  
6 property is set for foreclosure on August 13, 1997.

7 A. The Judgment is Not "Support or Maintenance"

8 It is questionable whether the portion of the Stipulated  
9 Judgment granting a lien to plaintiff also imposed personal  
10 liability on the debtor. Assuming that it does, plaintiff contends  
11 that this portion of the Stipulated Judgment is in the nature of  
12 support and is therefore nondischargeable pursuant to 11 U.S.C. §  
13 523(a)(5). I disagree. Paragraph 18 of the Stipulated Judgment  
14 clearly recites that the judgment lien was awarded "in consideration  
15 for the equity of [plaintiff]." The language is unambiguous and  
16 establishes that the judgment lien was a division of property.  
17 Further, plaintiff's own testimony establishes that she did not look  
18 to the judgment as necessary support but as a future stake to ensure  
19 she could at some point own her own home. Plaintiff testified that  
20 she intended to use the proceeds of the judgment lien to buy a home  
21 for herself. She said that although the Clackamas County Circuit  
22 Court wanted the property sold within three months to satisfy her  
23 judgment lien she preferred a longer period, thus demonstrating a  
24 lack of need for immediate support. Plaintiff worked in the  
25 accounting field during the entire time the parties were married.  
26 Their separate incomes were similar. Further, no evidence suggests

1 that plaintiff would have been entitled to a support award under  
2 Oregon law. Although plaintiff has since become unemployed I must  
3 determine the nature of the debt and the intent of the parties at  
4 the time of the Stipulated Judgment.

5 In determining whether an obligation is intended as support  
6 for a former spouse I "look beyond the language of the [Stipulated  
7 Judgment] to the intent of the parties and to the substance of the  
8 obligation." In re Shaver, 736 F.2d 1314, 1316 (9th Cir. 1984). In  
9 light of the clear language of the Stipulated Judgment, plaintiff's  
10 express waiver of support, and plaintiff's stated purpose to have a  
11 future stake in real property, I cannot find that the judgment is in  
12 the nature of support.

13 B. The Judgment is Dischargeable Under 11 U.S.C.  
14 § 523(a) (15).

15 At the time he filed his bankruptcy petition, debtor was  
16 insolvent by as much as \$50,000. Pursuant to 11 U.S.C. §  
17 523(a) (15) (A), based upon a review of the schedules on file and  
18 debtor's testimony I find that the debtor does not have the ability  
19 to pay the judgment from his income or property which is not  
20 reasonably necessary for his own or his dependents' support. I make  
21 this determination based upon a finding that it is unlikely that  
22 debtor will be successful in selling the real property prior to  
23 foreclosure to preserve any equity in the property. If, however,  
24 debtor should sell the property before foreclosure, the judgment  
25 lien will attach to reach any equity available to satisfy the  
26 judgment lien.

1           2. The Indemnity Agreement is Discharged.

2           The Stipulated Judgment requires debtor to hold plaintiff  
3 harmless from certain debts. Although plaintiff argues that this  
4 indemnity agreement is in the nature of support and therefore  
5 nondischargeable pursuant to 11 U.S.C. § 523(a)(5), her testimony  
6 clearly establishes that the purpose of the provision was not to  
7 provide for her support or maintenance, but rather to preserve the  
8 value to her of the judgment lien by protecting her credit to ensure  
9 that when she received payment on the judgment lien she could  
10 qualify for a mortgage loan. The indemnity agreement is not in the  
11 nature of support.<sup>2</sup>

12           The evidence reflects that plaintiff is not paying her own  
13 obligations due to her unemployment. Because plaintiff is by all  
14 appearances hopelessly insolvent and unable to pay her own  
15 obligations, I find that the benefit to the debtor, i.e.  
16 preservation of his fresh start, outweighs the detriment to  
17 plaintiff, i.e. protection of her credit rating from debts which  
18 debtor is obligated by the Stipulated Judgment to pay and avoidance  
19 of bankruptcy. The indemnity agreement is discharged pursuant to  
20 11 U.S.C. § 523(a)(15)(B).

21 / / / /

22 / / / /

23

24

25           <sup>2</sup>Plaintiff seems to suggest that paragraph 5 of the Judgment evidences  
26 an intent of the parties that the indemnity agreement be a nondischargeable  
support obligation. However, as drafted, paragraph 5 simply states that  
the indemnity agreement is either a support obligation under 11 U.S.C.  
§ 523(a)(5) or a "divorce obligation" under 11 U.S.C. § 523(a)(15).

1           The foregoing constitute my findings of fact and conclusions  
2 of law pursuant to Fed. R. Bankr. Proc. 7052. I will enter a  
3 separate judgment consistent with the foregoing.  
4

5   
6 Donal D. Sullivan  
7 Bankruptcy Judge

8 cc:     George Hoselton, Esq.  
9         Edward Hill, Esq.  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26